

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

APPEAL UNDER SEC. 374(2) CR.P.C.

Criminal Appeal No. 163 /2001.

APPELLANT
(In custody)

Chhabilal aged 30 years son of
Bisahu, by caste Gond, resident
of village Badal, Police Station
Narharpur Distt, Kanker (Bastar)
(Chhattisgarh)

VERSUS

RESPONDENT
(Prosecution)

State of Chhattisgarh
Through : P.S. Narharpur
Distt. Kanker (Chhattisgarh)

FIRST APPEAL BEFORE THIS HON'BLE COURT.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench: -</u> <u>Hon'ble Mr. L.C. Bhadoo and</u> <u>Hon'ble Mr. V.K. Shrivastava, JJ.</u> <u>4-9-2006</u> Mr. Amiyakant Tiwari & Mr. Arvind Singh, Advocates for the appellant. Mr. D.K. Gwaire, Deputy Govt. Advocate with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent. Oral judgment dictated on <i>Dais</i>. <u>Per L.C. Bhadoo, J: -</u> By this appeal under Section 374 (2) of the Cr.P.C., the accused/appellant has challenged the legality and correctness of the judgment of conviction and order of sentence dated 13th October, 2000, passed by the Additional Sessions Judge, Kanker, in Sessions Trial No.291/98, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of his wife Devantin Bai, sentenced him to undergo imprisonment for life. Case of the prosecution, in brief, is that in the intervening night of 28th & 29th May, 1998, the accused, deceased (wife of the accused) and other family members were sleeping after taking their meals. However, in the wee hours of 29th May, 1998 Tetobai (PW-1), mother of the accused, woke up and saw that deceased Devantin Bai has not woken up, therefore, she went near Devantin Bai and saw that she was lying in the pool of blood and her neck was cut. She enquired about the presence of her son Chhabilal,	

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	but he was not present in the house. Axe was lying near the body of the deceased. Hearing the screams of Tetobai, other family members also wake up. The matter was reported by Bisahu (PW-2), father of the accused, in Police Station: Narharpur at 10.30 a.m. on 29-5-1998. The case was registered vide F.I.R. (Ex.P-2) under Section 302 of the I.P.C. and the Investigating Officer took up the investigation. Merg intimation Ex.P-1 was also given by Bisahu (PW-2). The Investigating Officer left for the scene of occurrence and after giving notice Ex.P-3 to the Panchas, prepared the Panchnama (Ex.P-3B) of the dead body. The dead body of Devantin Bai was sent for post-mortem examination to Primary Health Centre, Narharpur, where post-mortem was conducted by Dr. Devendra Nag (PW-8). He prepared post-mortem report Ex.P-3A. He opined that the mode of death is syncope due to haemorrhage and the nature of death is homicidal. The Investigating Officer took into possession blood stained soil and plain soil from the place of occurrence under Ex.P-4. He also took into possession the blood stained mat (Kathri) from the place of occurrence under Ex.P-5. Clothes of the deceased were taken into possession under Ex.P-6. Site plan Ex.P-8 was prepared by the Investigating Officer. The axe was taken into possession under Ex.P-9. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Kanker, who in turn committed the case to the Sessions Judge, Bastar, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish charge against the accused examined 11 witnesses. Statement of the accused was recorded under	

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	Section 313 of the Cr.P.C. in which he denied the material appearing against him and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of A.G.P. and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment. We have heard Mr. Amiyakant Tiwari & Mr. Arvind Singh, learned counsel for the appellant and Mr. D.K. Gwalre, learned Deputy Govt. Advocate with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondents, and perused the record. Learned counsel for the appellant have not disputed the fact that the death of deceased Devantin Bai was homicidal in nature. Apart from that, the medical evidence of Dr. Devendra Nag (PW-8) as also the evidence of Tetobai (PW-1), Bisahu (PW-2), Jaimobai (PW-3), Sagau (PW-4), Kunwar Singh (PW-5) & Gaandarai (PW-6), who saw the body of Devantin Bai having injury on neck, establishes the fact that the cause of death of Devantin Bai was homicidal in nature. Now, coming to the involvement of the accused/appellant in the crime in question, learned counsel for the appellant argued that as per the prosecution evidence, the deceased was sleeping near Tetobai (PW-1), Jaimobai (PW-3) and other children, and there is nothing in the prosecution evidence that they had heard the cries of the deceased, as such the evidence of the prosecution witnesses is unnatural and does not inspire	

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	confidence. Had Devantin Bai was attacked with axe by the accused, then there was no occasion that Devantin Bai would not have raised the cries. Other argument of learned counsel for the accused/appellant is that when the accused made extra judicial confession, the Police was present. Moreover, the extra judicial confession of the accused cannot be said to be voluntary on account of the fact that as per the prosecution evidence, the villagers caught hold of the accused and he was brought in the village, therefore, in the presence of so many villagers, under fear, he made the extra judicial confession. On the other hand, learned counsel appearing for the State/ respondents supported the judgment of the trial Court. As far as the first argument of learned counsel for the appellant is concerned, as per the prosecution evidence all the family members after taking their meal went for sleep and the case of the prosecution is that when the deceased was asleep, the accused assaulted the deceased on her neck with the axe, as a result of which she received a cut injury in the size of 3" x 1" x 3" and muscles, vessels, carotid artery & second vertebra were found cut. Therefore, when the accused gave a blow with an axe on the neck of deceased Devantin Bai while she was sleeping, on account of the said attack there was no occasion for her to raise cry, as such, we do not find any merit in the argument of learned counsel for the appellant. Now, coming to the point of extra judicial confession whether same was voluntary or not, Bisahu (PW-2), father of the accused, has stated in his	

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	evidence that when they woke up and saw the body of Devantin Bai, the accused was not in the house, whereas, in the night he slept in the house. Thereafter, the villagers of Village: Pathrinala brought Chhabilal, the accused, in the village, the villagers enquired from him on which the accused said that he has committed the murder of Devantin Bai. Similar is the evidence of Jaimobai (PW-3), sister of the accused, who was present on the fateful night along with her husband Sagau (PW-4). She has stated in her evidence that on the fateful night, the accused and other family members went for sleep, on hearing the cries of her mother, she went towards the body of the deceased and found that neck of the deceased was cut, blood was oozing out of it, axe was lying there and the accused was not at the residence. Thereafter, the villagers collected on the scene of occurrence, in the evening the accused was brought in the village and on enquiry by the villagers he said that he has murdered Devantin Bai. Similar is the evidence of Sagau (PW-4) - brother-in-law of the accused, Kunwar Singh (PW-5), Gaandarai (PW-6), Dhanraj (PW-7), Garib Das (PW-10) & Kesuram (PW-11). In cross-examination of these witnesses, nothing has been asked about the extra judicial confession made by the accused before them. It has not come in cross-examination of these witnesses or any other evidence that when the accused made extra judicial confession before the villagers, the Police was present. There is nothing on record to show that when the accused was brought to the village and enquiry was made from him as to whether at that time, he was frightened or made extra judicial confession under any threat or fear. Inference cannot be drawn merely because he was	

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	brought by the villagers of other village to his house, therefore, he was frightened. As per Section 24 of the Indian Evidence Act, 1872, extra judicial confession made by the accused becomes inadmissible "if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him". Nothing has come on record to indicate that the accused made extra judicial confession under any inducement, threat or promise, rather close family members of the accused themselves namely, father, sister and brother-in-law who had no grudge or bias against the accused have clearly stated that the accused made extra judicial confession before them. In the circumstances, there is nothing on record to differ from the conclusion of the trial Court that the extra judicial confession made by the accused was voluntary, as such, we do not find any substance in the argument advanced by learned counsel for the appellant that the extra judicial confession was not voluntary. Apart from that, it has come in the evidence of Tetobai (PW-1) - mother of the accused, Bisahu (PW-2) - father of the accused, Jaimobai (PW-3) - sister of the accused & Sagau (PW-4) - brother-in-law of the accused that on the fateful night, the accused and other family members	

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	went for sleep in the house after taking their meal and on the next morning when the mother of the accused woke up and found the dead body of Devantin Bai, wife of the accused, the accused was not present in the house and it has come in evidence that he was brought to the village from Village: Pathrinala by the villagers of that village. Therefore, subsequent conduct of the accused after commission of crime i.e. absconding from the place of occurrence and brought back by the villagers of Village: Pathrinala to his village shows that the accused was involved in the crime and that is why he left the village. The said conduct of the accused is admissible under Section 8 of the Indian Evidence Act, 1872. The accused has not explained as to why he left the house in the night. Therefore, this is also one of the circumstances that goes against the accused, which corroborates involvement of the accused in the crime coupled with extra judicial confession made by the accused before the above mentioned witnesses. For the foregoing reasons, we do not find any reason to differ from the reasonings given by the trial Court and the conviction of the accused is based on legal evidence, as such, there is no ground for interference by this Court with the finding of the trial Court. In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.	
Soma	Sd/- L.C. Bhadoo Judge	Sd/- V.K. Shrivastava Judge

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